

PEREGRINE BROADCASTING CO.

IBLA 81-476

Decided March 4, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, rejecting right-of-way application for commercial FM broadcast station. OR 23005.

Set aside and remanded.

1. Communication Sites -- Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Federal Land Policy and Management Act of 1976

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

2. Communication Sites -- Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Federal Land Policy and Management Act of 1976

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Overruled: Northwestern Colorado Broadcasting Co., 18 IBLA 62 (1974).

APPEARANCES: Bruce Bischof, Esq., Sunriver, Oregon, for appellant;
Donald P. Lawton, Esq., Office of the Solicitor, Pacific Northwest Region, for Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Peregrine Broadcasting Company (Peregrine) appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 23, 1981, which rejected its application (OR 23005) for a communications site right-of-way site on Grizzly Mountain, near Prineville and Madras in Deschutes County, Oregon.

On November 9, 1979, Peregrine filed its application for a right-of-way to use Grizzly Mountain for a 50 kilowatt commercial FM broadcast station, including a 12- by 16-foot building and a 12-foot square tower base supporting a 150-foot high antenna. The application was filed with BLM pursuant to section 501(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a) (1976).

Grizzly Mountain, elevation 5,635 feet, has been a communications site serving central Oregon for many years, and 15 parties presently use it, principally for low-power two-way radio communication equipment, and also as a relay station for television signals. Peregrine evidently notified BLM's Prineville, Oregon, District Office of its interest prior to filing its formal application with the State Office, for the District Office had a public meeting on November 2, 1979, to acquaint the existing users of the site with Peregrine's proposal and to allow them to comment on it.

BLM's record is silent about what transpired at this meeting. Peregrine states that 18 representatives of existing users attended, and that only one user voiced any concern, questioning whether "RF radiation" from Peregrine's broadcasts would interfere with low-power users. It states that it offered to provide in writing that it would not commence transmitting regular broadcasting until interference problems, if any, had been rectified at its expense. It also states that there was general support among existing users to initiate an FM commercial radio station in the area.

Subsequently, on March 3, 1980, Ochoco Telecasters, Inc. (Ochoco), which apparently operates a television translator station from Grizzly Mountain, filed with the District Office a copy of the comments that it had filed with the Federal Communication Commission (FCC). Ochoco stated that several engineers had warned it that Peregrine's proposed FM broadcasting at 94.5 megahertz could cause interference with its reception of VHF channel 10, and that Peregrine's broadcasting at 50 kilowatts, as proposed, would cause Ochoco's preamplifiers to oscillate, also resulting in interference. Ochoco noted that its Board of Directors had adopted a resolution on December 18, 1979, opposing Peregrine's plan.

On March 7, 1980, BLM's State Office wrote to existing users to notify them of Peregrine's and two other applications and to provide them with copies of the applications. ^{1/} BLM requested their comments on "site-specific" matters, but advised them to send any comments concerning possible frequency or electromagnetic incompatibility to the Office of Telecommunications in the Commerce Department or to the FCC.

On March 20, 1980, the District Manager also solicited written comments both from existing users and from applicants to use Grizzly Mountain on how best to use the site. He indicated that BLM, with advice from present and prospective users, would be preparing a "site development plan" in order to "provide the maximum compatible use for the greatest number of electronic communications uses in the limited space available on Grizzly Mountain." He enclosed a list of alternatives on how best to use the site and announced a second public meeting in Prineville on April 10, 1980, to discuss its development.

Although BLM's record contains little evidence about the April 10 meeting, the following questions about general future development of the site were evidently identified: Whether to restrict future construction on the site to common buildings occupied by several users; whether to restrict antenna heights in order to prevent unsightliness; and how to prevent and eliminate interference between users. The written comments elicited in April 1980 from existing users about Peregrine's proposal were concerned, almost unanimously, that operating a 50-kilowatt FM station would generate strong electromagnetic interference which would hamper their use of the site for two-way radio communication.

According to BLM's subsequent land report, Peregrine's engineering consultant, in a meeting with a representative of the District Office on April 11, 1980, offered to modify its original proposal to lower the antenna height from 150 feet to 15 to 20 feet, and to use a directional antenna aimed northwest from Grizzly Mountain at Madras, Bend, Redmond, and Prineville. The consultant apparently contended that using directional broadcasting would reduce the possibility of interference with established users, which are located to the east and above Peregrine's proposed site, behind the directional radiation patterns of the modified antenna.

Peregrine also filed written comments with the District Office on April 24, 1980, in which it stated that it recognized that the 150-foot height of its antenna, as originally proposed, was an environmental concern, and that electromagnetic interference with other users was a potential problem. It indicated that, in order to mitigate adverse visual impacts of its proposed use, it was willing to lower its antenna

^{1/} In addition to Peregrine's, there were two other applications to use Grizzly Mountain, from M. Rheinholdt TV and Communication and from the National Weather Service. At last report, these applications were still pending.

height and also to build or share a low-profile multiple-user modular building. Peregrine indicated that this design would also mitigate interference with other users, since its transmitter would be buried, shielded, and grounded, and could be isolated from other users' receivers. In addition to using a directional antenna, Peregrine expressed its willingness to reduce power output, to isolate its transmitting antenna from its microwave link, and otherwise to cooperate with existing users to eliminate interference.

On June 23, 1980, the District Office sent copies of the letters that it had received concerning presumed interference associated with Peregrine's proposal to the Secretary of FCC for his consideration in connection with Peregrine's license application.

On July 16, 1980, the District Office issued the Grizzly Mountain Communications Site Management Plan governing all future use of the site. The plan provided, inter alia, that future development would be confined to the types of uses which existed at the site at that time, thus excluding Peregrine's proposed use, since there was then no FM broadcasting facility there. The plan also announced "visual management design parameters," under which a maximum antenna height of 50 feet was established. Finally, it decreed a "no build zone" on all but the peak of Grizzly Mountain. This zone included the location for which Peregrine had applied, so that under the management plan, Peregrine's proposal was effectively foreclosed, regardless of use or design.

The communication site management plan noted that FCC would determine the validity of technical objections to a proposed installation and could issue a special temporary authorization for a "relatively short period of time" to test its technical feasibility. It concluded as follows: "In general, the responsibility for correcting proximity interference will be upon the applicant. Any existing user affected will be expected to extend all reasonable cooperation in reaching a satisfactory solution. In some cases this may involve adjustments on the part of existing users." The "minimum standards" adopted in the plan specify how interference may be overcome: "When radio interference occurs, notch filters, crystal filters and dual ferrite isolators and/or band pass devices may be required. The need for additional filtering equipment will be determined on a case-by-case basis."

On August 11, 1980, the District Manager issued his environmental assessment/land report concerning Peregrine's proposal specifically. The report stressed that the proposed location is within the "no build zone" identified by the management plan, and explained that the purpose of establishing this zone was to mitigate adverse "visual impact" by restricting future construction to areas on the crest of Grizzly Mountain, where structures could be screened by trees, and where trees would provide a background so that aerial towers would not be silhouetted on the skyline. The report noted both the existing users' concern about degradation of their operations at the site and Peregrine's proposals in response discussing how to eliminate interference.

The report recommended that Peregrine's application be denied in order to provide for the maximum utilization of the site by the greatest number of users with a minimum degree of conflict. The reasons for this recommendation were that the public's written comments had indicated that "the presence of a broadcast group could degrade the operational performance of existing facilities"; that denial of Peregrine's application would insure the continued operation of low-frequency communications with a minimum of interference; that the management plan, which was developed pursuant to public meetings and commentaries, did not allow an FM broadcaster on the site and, in any event, did not allow use of the site proposed by Peregrine; and that granting the application would establish a precedent to allow other similar high-power broadcasting on the site, further diminishing the suitability of the site for other uses.

On September 24, 1980, FCC released a notice of proposed rulemaking in which it proposed to assign an FM channel to Peregrine. The proposed rulemaking does not address the question of possible interference with other users of Grizzly Mountain and is clearly an interim decision. The record is silent as to any further action by FCC.

On January 23, 1981, the State Office rejected Peregrine's application, citing the provisions in the management plan barring the application, and finding that Peregrine's proposed use of the site for a high-power commercial broadcasting station would be inconsistent with and would degrade the usability of the site by existing users, including vital governmental services, and also would degrade the visual quality of the mountain top. Peregrine appealed.

[1] Approval of an application for a right-of-way under FLPMA is a discretionary matter. Department of the Army, 51 IBLA 26 (1980); Stanley S. Leach, 35 IBLA 53 (1978). A decision by BLM to reject such an application will be affirmed when the record shows the decision to be a reasoned analysis of all pertinent factors with due regard for the public interest. Id. However, where sufficient reason exists to disturb the decision, it may be modified. Eugene V. Vogel, 52 IBLA 280 (1981); Jack M. Vaughan, 25 IBLA 303 (1976).

We are not satisfied that BLM fully and fairly reviewed appellant's proposal, as modified, and, accordingly, we remand the matter for further consideration.

We are not persuaded that appellant's proposal, as modified, would significantly degrade the visual quality of Grizzly Mountain, even if its facility is located down the slope on Grizzly Mountain Road, as originally planned. Appellant's proposed underground structures, as illustrated in its architect's sketches, are unobtrusive and, if properly painted, would probably not unduly degrade the appearance of the peak.

Nor does it appear that the antenna height would be a significant visual problem under appellant's modified proposal, since it would be

only 15 to 20 feet high and, thus, apparently would not rise above the top of the crest or above the tree line. If this is so, there would appear to be no basis for BLM to disallow appellant's proposal for this reason, notwithstanding the subsequent designation of the site as being within a "no build zone."

The record shows only that appellant offered to "camouflage" any structures built on Grizzly Mountain, and it is unclear as to the exact appearance of appellant's modified antenna. On remand, BLM should require appellant to provide details of these plans and review their visual impacts.

[2] We perceive no reason why BLM cannot rule on the question of radio interference caused by multiple broadcasting in close proximity at the site. While, in the past, the Board looked to FCC to resolve technical problems involving BLM communications sites (Northwestern Colorado Broadcasting Co., 18 IBLA 62 (1974)), 2/ the regulation providing for joint FCC and BLM review of these problems, 47 CFR 1.70, has been eliminated. Although BLM has made FCC aware of the possibility of local interference on Grizzly Mountain resulting from appellant's FM license application, FCC did not rule on the question in its proposed rulemaking, and the Solicitor advises us in BLM's answer that FCC's Broadcast Bureau confirms that there is no longer any procedure under which FCC considers information on such site-related technical questions in the context of BLM's right-of-way review process. Thus, we hold that it is now appropriate for BLM to consider site-related technical questions, such as the question of radio interference here, in order to maximize the use of the communication sites under its management.

We recognize, as evinced by the many statements which appear in the record, that appellant's original plan may have presented a serious potential for destructive interference with other users of the site. However, we are not satisfied that BLM has fully and fairly considered whether appellant's modified proposal will in fact impair the site for other users. We also recognize that it may be difficult to ascertain these facts in advance and that safeguards may be required before Peregrine is permitted to build. However, we cannot affirm BLM's decision to deny the application simply because there is a mere possibility of interference, or because denial will most easily insure that there is no degradation of existing use.

Appellant has already advanced some suggestions on how to achieve compatible use, and the management plan, which wisely dictates a case-by-case analysis of the radio interference problem, specifies various means of countering the problem. The purpose of the remand is to allow appellant an opportunity to define its modified plan specifically and to put into the record evidence, including specific technical evidence, showing that this plan will not result in irremediable interference

2/ To the extent inconsistent with this decision, Northwestern Colorado Broadcasting Co., supra, is hereby overruled.

that is destructive to other users of the site. BLM should allow existing users to respond to this material and may, of course, otherwise supplement the record as it sees fit. If the amended record shows that significant interference would probably result, and that the value of the usability destroyed by the interference would outweigh the benefits of the FM facility to the community that it serves, BLM would be justified in rejecting appellant's application, particularly if other sites are available, a question that is not answered by the record itself.

BLM may also wish to consider the possibility of relocating appellant's and other users' facilities on Grizzly Mountain, consistent with its concern for avoiding unsightliness, in order to mitigate interference with low-power users. Such possibilities might include granting appellant a special temporary authorization or a right-of-way with appropriate restrictive stipulations, or requiring it to post bond against any damages that its operation might cause to existing users. Appellant, of course, bears the burden of proposing and demonstrating the feasibility of any such alternate site management scheme and must agree to bear the reasonable costs of accommodating the site to meet its needs.

We note that BLM cannot reject a request for use of the public lands solely on the basis that granting the right might result in a deluge of similar applications by others. 3/ Eugene V. Vogel, supra at 286. If appellant were able to use the site without significant adverse effect, BLM could examine any subsequent application for a similar use in the same way. If it were determined that the subsequent application would result in interference through cumulative effects or otherwise, BLM could properly reject the application. That is, BLM would be in no way bound to accept a later application simply because it had granted an earlier application.

We do not, as the dissent suggests, ignore the fact that BLM did briefly consider and analyze appellant's proposed modifications prior to issuing both its general communications site management plan and its land report and decision concerning appellant's application. We simply hold that the present record does not sufficiently support BLM's conclusion, resulting from this consideration, that appellant's use of the site, even under the proposed modification, would not be in the public interest because it would render the site useless for low-power reception and transmission. At best, the record supports a conclusion that appellant's modified plan presents a possibility of interference with existing users and of "desensitization" of the site. This conclusion does not justify a decision to reject appellant's application.

3/ The decision of the State Office that is the subject of this appeal does not state the danger of similar applications as a reason for rejection. However, the District Manager so stated in his environmental assessment/land report, which forms part of the record on which the decision was based.

The dissent relies greatly on the negative comments elicited from existing users. Without exception, these comments deal with appellant's original proposal to use a 250-foot omnidirectional antenna and to broadcast at 50,000 watts, and were made without reference to appellant's later modified proposal. We would not dispute that the record shows that this original proposal presented so serious a potential for destructive interference that BLM would be justified in rejecting appellant's application. However, it is simply unfair to judge appellant's modified proposal on comments made without reference to it, especially since the later proposal made significant concessions to BLM's legitimate concerns, including reduction of antenna height and broadcast power and use of a directional broadcast beam, and since it alleged that interference could be eliminated as a result.

We also do not rely on the technical literature and affidavits submitted by the Solicitor in BLM's answer. While this material is very helpful in describing BLM's concern about on-site interference, it would be unfair to base our decision on it, since it is not part of the BLM record that is properly the subject of our review. Appellant may also have felt that it had no opportunity to respond to BLM's answer, there being no specific provision in 43 CFR Part 4 allowing an appellant to file a reply brief.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the matter remanded for further action as provided herein. 4/

Bernard V. Parrette
Chief Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

4/ We wish to commend the parties, particularly the Regional Solicitor, for their excellent and instructive briefs in this matter.

ADMINISTRATIVE JUDGE HARRIS DISSENTING:

While I am in agreement with the majority's conclusion concerning the ability of BLM to consider site-related technical questions, I must respectfully dissent from the majority's conclusion that BLM did not fully and adequately consider appellant's proposal, as modified. I believe the majority expressed the proper standard of review to be applied in a case such as this. However, the majority finds sufficient reasons for disturbing the BLM decision; I do not. I would conclude that the BLM decision represents a reasoned analysis of pertinent factors with due regard for the public interest.

Based on the Grizzly Mountain Communications Site Plan (CSP), approved July 16, 1980, the Environmental Assessment, dated August 11, 1980, and public comments, BLM concluded in its January 23, 1981, decision:

The Grizzly Mountain site is being managed and used as a communication site, including microwave, UHF-VHF, low band and low power translator equipment. The applicant's proposal of a high power commercial broadcasting station is inconsistent with these purposes. It is not in the public interest to allow a type of use which would degrade the usability of the site by the large number of existing users, including vital governmental services. The application for a right-of-way for a commercial broadcasting station is therefore rejected.

The majority concludes that appellant's proposal, as modified, was not fully and fairly reviewed by BLM. To the contrary, I believe that appellant's proposal, as modified, was taken into consideration in arriving at the CSP, and that the record supports a finding that BLM properly reviewed appellant's proposal, as modified.

I come to this result in the following manner. The notification of the April 10, 1980, meeting stated as follows: "This is to notify existing users, applicants and other parties interested in the Grizzly Mountain Communications site that comments are being solicited on how best to develop this highly desirable and heavily used site." Attached to the notification was a page titled "Grizzly Mtn. Communications Site Mgmt. Plan Alternatives," which stated:

1. The microwave, UHF-VHF communications group plus TV translators on Grizzly Mtn. only and use alternative sites for other groups.

(a) Continue with same type program as we've had in the past. Require all grantees to comply with terms and conditions of their individual grants and as these grants expire and need modifications require each facility comply with the management plan as it pertains to building standards, i.e., color, antenna and tower height, etc.

2. Allow all communications groups on Grizzly Mtn.

(a) Same as 1 (a) and locate any broadcast group transmitters below Ochoco Telecasters Transmitter facilities.

3. Establish a building managed by a manager with a fee from multiple users near the present BLM site. Encourage existing users and require all future users to locate within this building. Exclude Pacific Gas, Bonneville Power Administration and Ochoco Telecasters Transmitter facilities and other existing sites that meet the requirements of the management plan. Require performance bonds to assure requirements are met. The multiple user building to be constructed and managed either by:

(a) Private company funds in the form of and exclusive easement to be determined by sealed bid process.

(b) by group of user's consolidating funds to construct building with designated manager.

4. Look at other alternatives in the input process.

Although the case file does not contain any record of the discussion at that meeting, it does include copies of written comments filed with BLM subsequent to the meeting. These comments are summarized, as follows, by counsel for BLM in his answer dated May 22, 1981:

The United States Forest Service in a letter from Forest Supervisor for the Ochoco National Forest strongly opposed the installation of any public broadcasting facility on the Grizzly Mountain. Objection was also received from the Director of Administrative Services of Region 6 of the Forest Service. As discussed in this letter and the affidavit of Forest Service Electronics Engineer Floyd Snyder (attached as Exhibit 11) the Forest Service has several low power transmitters and receivers on the site. These are used for long distance radio control links from Harney County, for central dispatch on the Ochoco National Forest and for Forest Service aircraft operations in central Oregon. These systems provide critical communications during emergencies such as fires and accidents and routine communications the remainder of the time. The Forest Service is concerned that the weak radio signals being received from mobile and portable radios in the field for rebroadcasting from Grizzly Mountain will be masked by the background (ambient) noise level created by a 50,000 watt broadcast signal, that the Forest Service receivers will be desensitized and that a higher probability will exist of intermodulation products because of the continuous carrier of the proposed FM station.

In letters to the BLM from Rheinholdt TV and Communications dated April 2, and April 16, 1980, it was urged that the power of any signal on the site be limited to

1,000 watts to avoid intermodulation problems and the disruption of digital controlling circuits caused by the generation of small spikes of energy by high radio frequency power. Rheinholdt cites examples of this type of problem which it has experienced on Aubrey Butte which it shares with KICE-FM which has a 50,000 watt signal. Rheinholdt also urges that if a 50,000 watt transmitter is allowed on Grizzly, its center of radiation be kept at the 125 to 150 foot level above the top of the mountain to reduce radiation into the communications antennas. This, of course, would require an antenna height well above the 50 foot maximum established by the BLM Management Plan.

In its letter to the Prineville District of April 14, 1980, the Oregon State Highway Division also raised concern about the BLM requirement for short antennas because of the need for vertical separation between some antenna systems. The State also expressed concern about the possibility of a high-power FM broadcasting station being constructed close to its own facility because of past experience with interference problems which it has had in similar situations.

Ochoco Telecasters, Inc. in a letter to the Prineville District dated April 18, 1980, and in a letter to the FCC dated February 15, 1980 (both of which are included in Exhibit 7) strongly opposed the location of a 50,000 watt FM transmitter on Grizzly Mountain because of its incompatibility with existing users. Ochoco operates low powered television translator service on Grizzly for five television channels. The company notes that the second harmonic of the appellant's FM signal will fall in the middle of one of its TV channels and that the 50,000 watt signal will cause oscillation in its preamplifiers.

The Oregon State Department of Forestry also expressed concerns in its letter of April 18, 1980, and requested that user guarantee its continued receiving performance or pay the cost of relocating the State's installation to another site.

In a letter dated April 10, 1980, the Crook County Office of the Sheriff, which has a facility on Grizzly to provide law enforcement and search and rescue capabilities, stated that the amount of wattage which Peregrine proposed to broadcast was completely incompatible with the present users and could result in the operational closing of Grizzly Mountain to many of these users.

In addition Hudspeth Sawmill Company (letter of April 17, 1980) and Pine Products Corporation (letter of April 16, 1980) which both have two way communications on Grizzly, expressed opposition to any FM broadcasting station on the mountain because of incompatibility with their systems.

Besides the objections raised by other users of the Mountain, the BLM has grave concerns that its own radio communications facilities on the site would be interfered with. In an affidavit from Darrel Wolfe, the Telecommunications Manager for the Oregon State Office of the BLM, attached as Exhibit 12, it is pointed out that the Bureau's radio communications facility on Grizzly Mountain is the key unit in the radio system of the Prineville District. This radio net is used for general communications, fire protection, air craft control and search and rescue purposes. As Mr. Wolfe has noted, the introduction of a high powered FM facility on Grizzly Mountain will likely cause problems to the radio reception of the Bureau's transceiver. This will necessitate that the Bureau either make expensive modifications to its equipment or move the facility to another site.

(Answer at 8-11).

Appellant also sent comments to BLM, dated April 23, 1980, in which it urged "the adoption of Alternative 1(a)," ^{1/} and, in addition, it proposed a modification in that it expressed a willingness to lower its antenna height and also to build or share a below ground multiple-user modular building.

Having received appellant's modified proposal in April, we must assume that BLM evaluated it along with other comments in arriving at the CSP. In fact, the CSP states at page 1 that "[b]ased on BLM's receipt of written comments and input received at the April public meeting, the following team has drafted the communications site management plan as outlined below."

Subsequently, BLM developed an environmental assessment, dated August 11, 1980, that recommended that the application be denied. The assessment clearly indicated that the modified proposal contained in appellant's April 23, 1980, letter had been considered. The assessment stated that the rationale for the recommendation was to "provide for the maximum utilization of the communications site by the greatest number of users with a minimum degree of conflict."

The majority appears to ignore that BLM has made a reasoned management decision in its CSP to limit use of Grizzly Mountain to low level frequency users. Appellant's application and modified proposal were part of the record when that decision was made, and the decision was based, at least in part, on the possibility of interference from a high-power facility, such as that proposed by appellant.

^{1/} It would appear that what appellant actually was endorsing was Alternative 2a, since Alternative 1a appears to be the basis for the position adopted in the CSP.

Therefore, I differ from the majority in that I consider the possibility of interference sufficient in this case to support rejection. The majority states that the possibility of interference is insufficient; there must be a probability. However, since many of the users on Grizzly Mountain (such as BLM, Forest Service, Oregon State Department of Forestry, and the Oregon State Police) provide an important public service for fire, search and rescue, and police protection functions, I find the possibility of disruption of that service to provide a proper basis for the action taken. These are vital communication systems whose service should not be subject to possible interference when, as in this case, avoidance of such problems is a viable option.

I see no useful purpose being served by a remand. BLM has completed its analysis which involved a thorough study of the problem, input from public meetings and comments, and detailed site planning. In the CSP and its January 23, 1981, decision BLM concluded that the public interest would best be served by protecting the scenic quality of Grizzly Mountain and by providing existing and future users of the site with a compatible environment, insuring the maintenance of operational levels, free of interference. BLM has determined that not allowing high-powered broadcasting transmitters on Grizzly Mountain will permit maximum use of that part of the public land.

Based on my review of the record I would hold that there is adequate support in the record for BLM's decision to reject the application; that BLM gave full and adequate consideration to appellant's application and proposed modification; and that appellant has failed to supply sufficient reasons to change the result. 2/

I would affirm the BLM decision.

Bruce R. Harris
Administrative Judge

2/ Appellant asserts that alternative radio transmission sites are "virtually nonexistent." Appellant states, "virtually all reasonable communication sites are under the control of BLM or Forest Service. By rejecting the Right of Way Application, the BLM has effectively killed the possibility of a new FM station which is greatly needed by residents who currently do not have 24 hour radio coverage." First, it should be pointed out that rejection of this application for Grizzly Mountain does not foreclose the acceptance of an application for another site by either BLM or Forest Service. And even though appellant contends that no suitable alternative sites are available, counsel for BLM in his discussion of alternatives sites in his answer states that a number of potential sites exist (Answer at 16-18). Included with the answer is a map (Exh. 1) indicating these sites.

